

SENATE BILL NO. 113

INTRODUCED BY D. HARRINGTON

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING COUNTY ATTORNEYS TO PETITION FOR GUARDIANSHIP OF INCAPACITATED PERSONS UPON REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AND AMENDING SECTION 72-5-315, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) (a) The incapacitated person or any person interested in ~~his~~ the alleged incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(b) The department of public health and human services may petition for a finding of incapacity and appointment of a guardian pursuant to 52-3-804(5). The county attorney shall represent the department of public health and human services in its petition for guardianship.

(2) Upon the filing of a petition, the court shall set a date for a hearing on the issues of incapacity. The ~~allegedly~~ alleged incapacitated person may have counsel of ~~his own~~ the person's choice, or the court may, in the interest of justice, appoint an appropriate official or attorney, who has the power and duties of a guardian ad litem, to represent ~~him~~ the person in the proceeding, ~~who shall have the powers and duties of a guardian ad litem.~~

(3) The person alleged to be incapacitated ~~shall~~ must be examined by a physician appointed by the court, who shall submit ~~his~~ the physician's report in writing to the court, and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who ~~appears to have~~ caused the petition to be filed and the person who is nominated to serve as guardian, ~~and~~ visit the present place of ~~abode~~ residence of the person alleged to be incapacitated and the place it is proposed that ~~he~~ the incapacitated person will be

1 detained or reside if the requested appointment is made, and submit ~~his~~ the visitor's report in writing to the court.
2 Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated
3 person, the court, in formulating the judgment, shall ~~utilize~~ use the services of any public or charitable agency
4 that offers or is willing to evaluate the condition of the ~~allegedly~~ alleged incapacitated person and make
5 recommendations to the court regarding the most appropriate form of state intervention in ~~his~~ the person's
6 affairs.

7 (4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see
8 or hear all evidence bearing upon ~~his~~ the person's condition. ~~He~~ The person alleged to be incapacitated is
9 entitled to ~~be~~ have counsel present ~~by counsel~~, to present evidence, to cross-examine witnesses, including the
10 court-appointed physician and the visitor, and to a trial by jury. The issue may be determined at a closed hearing
11 without a jury if the person alleged to be incapacitated or ~~his~~ the person's counsel ~~so~~ requests a closed hearing
12 without a jury."

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